

REMARKS

Claims 10-32 are pending in the present application, of which claims 26, 31 and 32 have been withdrawn from consideration. Reconsideration of the above-identified application, in light of the following remarks, is respectfully requested.

Allowed Subject Matter

In the Office Action of November 29, 2004, the Examiner acknowledged the allowable subject matter of claims 10-24. Applicant appreciates the Examiner's favorable review.

Claim Rejections

35 U.S.C. §§ 102(b), 103(a)

The Examiner rejected claims 25, 28 and 30 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,417,134 to Fitz ("Fitz"). The Examiner also rejected claims 27 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Fitz in view of alleged Applicant's Admitted Prior Art ("AAPA"). Anticipation requires that each and every claimed feature be disclosed in a single prior art reference. Applicant respectfully traverses the rejection of claims 25, 28 and 30.

Independent claim 25 of the present application is directed to a punching apparatus for cutting a guide notch into a zipper of a polymeric bag. Among other things, independent claim 25 recites a housing having an opening, a first slot for leading a zipper into the opening, and a second slot for leading the zipper from the opening, a punch that creates a guide notch in the zipper in response to being moved into the opening while the zipper is present, and a guide mechanism engaging ends of the guide notch and guiding the zipper to the second slot.

Independent claim 28 of the present application is directed to a punching apparatus for cutting a guide notch into a zipper of a polymeric bag. Among other things, independent claim 28 includes a housing having a channel with a guide notch cutting region, a first zipper guide slot in the housing for guiding the zipper into the guide notch cutting region, a second zipper guide slot in the housing for guiding the zipper from the guide notch cutting region, a punch for cutting a guide notch in the zipper when advancing through the guide notch

cutting region, and a guide mechanism disposed to engage and guide a trailing edge of the guide notch in the zipper to the second zipper guide slot.

Hence, and as recited in independent claims 25 and 28, the punching apparatus includes a guide mechanism to engage ends of a guide notch created in a zipper of a polymeric bag. Particularly, and as recited in independent claim 28, the guide mechanism is "disposed to engage and guide [the] trailing edge of [the] guide notch" that is formed in the zipper of the polymeric bag. As shown in Figure 5, for illustration only, the notch (210) includes a leading edge (220) and trailing edge (240). As depicted, at least a portion of these edges are generally perpendicular to an outer edge of the zipper (140), with edge (230) of the notch (210) extending between the leading (220) and trailing (240) edges.

Fitz discloses an apparatus that includes a track with opposed shoulders for receiving a flat cable, guides for positioning the flat cable, and a punch for cutting in the flat cable a slot that is centrally aligned with the track. (Fitz, col. 3, ln. 30- col. 4, ln. 22 and Fig. 1). In contrast with Applicant's independent claims 25 and 28, as shown in Figs. 1 and 8 of Fitz, the guides (16, 16a) do not and cannot engage the centrally located slot formed in the cable, as described by Fitz, let alone ends of a guide notch, or trailing edge of a guide notch, as claimed by Applicant.

As can be clearly seen from Figures 3 and 5-8 of Fitz, the guides (16, 16a) are parallel to the track (42) and remain parallel to the track, due to the geometry of the links (52) shown in Figures 5 and 6. Moreover, the guides (16, 16a) are located near the outer edges of the track, and thus spaced from the centrally located slot of Fitz. As such, the guides (16, 16a) are not ever capable of engaging an edge, much less the trailing edge of the slot formed by the apparatus of Fitz. In short, Fitz does not ever disclose an apparatus for cutting a guide notch into a zipper of a polymeric bag, let alone an apparatus having among other things, a guide mechanism engaging ends of the guide notch, much less engaging and guiding the trailing edge of the guide notch as claimed by Applicant.

As recognized by the Examiner, the alleged AAPA does not support or suggest modification of the apparatus for laterally positioning flat cable as described by Fitz, to provide the punching apparatus recited in independent claims 25 and 28. Rather, the Examiner relies upon the alleged AAPA as allegedly disclosing or admitting the additional features of dependent claims 27 and 29. Although Applicant respectfully traverses the characterization of the alleged

AAPA, it is evident that Fitz alone or in combination with the alleged AAPA does not disclose or suggest the punching apparatus as recited in claims 25 and 28. For the foregoing reasons, Applicant respectfully submits that independent claims 25 and 28 are allowable over Fitz and the alleged AAPA, considered alone or in combination. Because independent claims 25 and 28 are allowable, claims 27, 29 and 30 are also allowable at least for depending therefrom.

Moreover, dependent claims 27, 29 and 30 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, claim 27 recites specific features of a guide slot in the housing, claim 29 recites specific features of the first and second slots, and claim 30 recites specific features of the guide mechanism. At least for these reasons, dependent claims 27, 29 and 30 are further allowable over the Fitz and the alleged AAPA, whether considered alone or in combination. Withdrawal of the rejection applied to claims 25, 28, and 30 under 35 U.S.C. § 102(b) as allegedly being anticipated by Fitz and of the rejection applied to claims 27 and 29 under 35 U.S.C. § 103(a) as being unpatentable over Fitz in view of alleged AAPA, is respectfully requested.

Upon allowance of independent claims 25 and 28, withdrawn claims 26, 31 and 32 also would be allowable at least for depending from these allowable generic claims.

Further, Applicant respectfully petitions for a withdrawal of the finality of the present final Office Action. Applicant considers the finality of the present final Office Action to be improper because (i) Applicant requested a formal interview in Applicant's Response filed on February 28, 2005 to the Office Action mailed on November 29, 2004, which Office Action was the first complete Office Action in the present application following filing of a Request for Continued Examination, and (ii) MPEP § 713.01 provides that "[w]here the reply to a first complete action includes a request for an interview, . . . the examiner, as soon as he or she has considered the effect of the reply, should grant such request if it appears that the interview . . . would result in expediting the case to a final action" (MPEP § 713.01, III). If such an interview had been timely granted, then the remarks submitted herewith would have been entered and considered prior to the present final Office Action.

Formal Request for Interview

If the present application is not considered to be in condition for allowance, Applicant again requests an interview with the Examiner to discuss the present application and

the prior art of record. Applicant's Attorney Daniel J. Hulseberg may be reached at telephone number (212) 294-3310 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

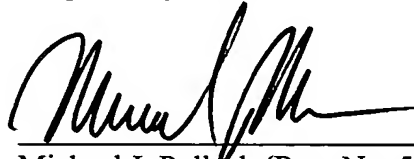
CONCLUSION

On the basis of the foregoing Amendment and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that this Amendment be entered by the Examiner and that the previous rejections of the pending claims be withdrawn. Applicant further requests that claims 26, 31, and 32 be rejoined with the pending claims and fully examined for patentability under 37 C.F.R. § 1.104. Claims 10-32 are in condition for allowance. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant submits that this Request for Reconsideration does not raise new issues for consideration or necessitate the undertaking of any additional search of the art by the Examiner because all of the elements and their relationships were either earlier claimed or inherent in the claims as examined. This Request for Reconsideration therefore allows for immediate action by the Examiner.

The Commissioner is hereby authorized to charge any additional fees (or credit any overpayment) associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-31400-USPT. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for above, such extension is requested and such fee should also be charged to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-31400-USPT.

Respectfully submitted,



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